

AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE MAY 3, 2011

**SENATE BILL**

**No. 108**

---

---

**Introduced by Senator Rubio**

January 13, 2011

---

---

An act to amend Sections 2727.1 and 2770 of, and to add Section 2777.5 to, the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 108, as amended, Rubio. Surface mining: idle mines.

The Surface Mining and Reclamation Act of 1975, with exceptions, prohibits a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency for the operation. The act requires an operator, within 90 days of a surface mining operation becoming idle, to submit to the lead agency for review and approval, an interim management plan. The act defines idle to mean a curtailment for a period of one year or more of surface mining operations by more than 90% of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

This bill would instead define idle to mean that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90% of its maximum annual mineral production within any of the last 5 years.

The act authorizes an interim management plan to remain in effect for a period not to exceed 5 years, after which, the lead agency is authorized to take certain actions, including renewing the interim management plan for another period not to exceed 5 years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

This bill would authorize the lead agency to renew the interim management plan for additional 5-year periods, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

Existing law requires the owner or operator of a mining operation to forward to the Director of Conservation an annual report that identifies certain things about the mining operation including the mining operation's status and the type and total amount of commodities produced.

This bill would authorize a mine operator who has failed to properly report mineral production or status prior to January 1, 2012, to correct the report in the 2012 annual report if the report is submitted on or before July 1, 2013, among other things. The bill would authorize a mine to return to idle status after being considered abandoned if an interim management plan is approved by July 1, 2013, and upon compliance with the above provisions. *The bill would authorize the Office of Mine Reclamation to enter any mine site for which a mine operator has requested a correction of mine status in order to conduct an inspection and the bill would require the mine operator to be responsible for the reasonable cost of this inspection.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2727.1 of the Public Resources Code is
- 2 amended to read:
- 3 2727.1. "Idle" means that an operator of a surface mining
- 4 operation has curtailed production at the surface mining operation,
- 5 with the intent to resume the surface mining operation at a future
- 6 date, for a period of one year or more by more than 90 percent of
- 7 its maximum annual mineral production within any of the last five
- 8 years.

1 SEC. 2. Section 2770 of the Public Resources Code is amended  
2 to read:

3 2770. (a) Except as provided in this section, a person shall not  
4 conduct surface mining operations unless a permit is obtained  
5 from, a reclamation plan has been submitted to and approved by,  
6 and financial assurances for reclamation have been approved by,  
7 the lead agency for the operation pursuant to this article.

8 (b) A person with an existing surface mining operation who has  
9 vested rights pursuant to Section 2776 and who does not have an  
10 approved reclamation plan shall submit a reclamation plan to the  
11 lead agency not later than March 31, 1988. If a reclamation plan  
12 application is not on file by March 31, 1988, the continuation of  
13 the surface mining operation is prohibited until a reclamation plan  
14 is submitted to the lead agency. For purposes of this subdivision,  
15 a reclamation plan may consist of all or the appropriate sections  
16 of any plans or written agreements previously approved by the  
17 lead agency or another agency, together with any additional  
18 documents needed to substantially meet the requirements of  
19 Sections 2772 and 2773 and the lead agency surface mining  
20 ordinance adopted pursuant to subdivision (a) of Section 2774,  
21 provided that all documents which together were proposed to serve  
22 as the reclamation plan are submitted for approval to the lead  
23 agency in accordance with this chapter.

24 (c) If a person with an existing surface mining operation has  
25 received lead agency approval of its financial assurances for  
26 reclamation prior to January 1, 1991, the lead agency shall  
27 administratively review those existing financial assurances in  
28 accordance with subdivision (d) prior to January 1, 1992. The  
29 review of existing financial assurances shall not be considered a  
30 project for purposes of Division 13 (commencing with Section  
31 21000). A person with an existing surface mining operation that  
32 does not have financial assurances that received lead agency  
33 approval prior to January 1, 1991, shall submit financial assurances  
34 for reclamation for review in accordance with subdivision (d).

35 (d) The lead agency's review of a reclamation plan submitted  
36 pursuant to subdivision (b) or of financial assurances pursuant to  
37 subdivision (c) is limited to whether the plan or the financial  
38 assurances substantially meet the applicable requirements of  
39 Sections 2772, 2773, and 2773.1, and the lead agency surface  
40 mining ordinance adopted pursuant to subdivision (a) of Section

1 2774, but, in any event, the lead agency shall require that financial  
2 assurances for reclamation be sufficient to perform reclamation  
3 of lands remaining disturbed. Reclamation plans or financial  
4 assurances determined to substantially meet these requirements  
5 shall be approved by the lead agency for purposes of this chapter.  
6 Reclamation plans or financial assurances determined not to  
7 substantially meet these requirements shall be returned to the  
8 operator within 60 days. The operator has 60 days to revise the  
9 plan or financial assurances to address identified deficiencies, at  
10 which time the revised plan or financial assurances shall be  
11 returned to the lead agency for review and approval. Except as  
12 specified in subdivision (e) or (i), unless the operator has filed on  
13 or before July 1, 1990, an appeal pursuant to subdivision (e) with  
14 regard to nonapproval of the reclamation plan, or has filed on or  
15 before January 1, 1994, an appeal pursuant to subdivision (e) with  
16 regard to nonapproval of financial assurances, and that appeal is  
17 pending before the board, the continuation of the surface mining  
18 operation is prohibited until a reclamation plan and financial  
19 assurances for reclamation are approved by the lead agency.

20 (e) A person who, based on the evidence of the record, can  
21 substantiate that a lead agency has either (1) failed to act according  
22 to due process or has relied on considerations not related to the  
23 specific applicable requirements of Sections 2772, 2773, and  
24 2773.1, and the lead agency surface mining ordinance adopted  
25 pursuant to subdivision (a) of Section 2774, in reaching a decision  
26 to deny approval of a reclamation plan or financial assurances for  
27 reclamation, (2) failed to act within a reasonable time of receipt  
28 of a completed application, or (3) failed to review and approve  
29 reclamation plans or financial assurances as required by  
30 subdivisions (c) and (d), may appeal that action or inaction to the  
31 board.

32 (f) The board may decline to hear an appeal if it determines that  
33 the appeal raises no substantial issues related to the lead agency's  
34 review pursuant to this section.

35 (g) Appeals that the board does not decline to hear shall be  
36 scheduled and heard at a public hearing within 45 days of the filing  
37 of the appeal, or a longer period as may be mutually agreed upon  
38 by the board and the person filing the appeal. In hearing an appeal,  
39 the board shall only determine whether the reclamation plan or the  
40 financial assurances substantially meet the applicable requirements

1 of Sections 2772, 2773, and 2773.1, and the lead agency surface  
2 mining ordinance adopted pursuant to subdivision (a) of Section  
3 2774. A reclamation plan or financial assurances determined to  
4 meet these requirements shall be approved. A reclamation plan or  
5 financial assurances determined not to meet these requirements  
6 shall be returned to the person filing the appeal with a notice of  
7 deficiencies, who shall be granted, once only, a period of 30 days,  
8 or a longer period mutually agreed upon by the operator and the  
9 board, to correct the noted deficiencies and submit the revised  
10 reclamation plan or the revised financial assurances to the lead  
11 agency for review and approval.

12 (h) (1) Within 90 days of a surface mining operation becoming  
13 idle, as defined in Section 2727.1, the operator shall submit to the  
14 lead agency for review and approval, an interim management plan.  
15 The review and approval of an interim management plan shall not  
16 be considered a project for purposes of Division 13 (commencing  
17 with Section 21000). The approved interim management plan shall  
18 be considered an amendment to the surface mining operation's  
19 approved reclamation plan, for purposes of this chapter. The  
20 interim management plan shall provide measures the operator will  
21 implement to maintain the site in compliance with this chapter,  
22 including, but not limited to, all permit conditions.

23 (2) The interim management plan may remain in effect for a  
24 period not to exceed five years, at which time the lead agency shall  
25 do one of the following:

26 (A) Renew the interim management plan for an additional period  
27 not to exceed five years, which may be renewed for additional  
28 five-year periods at the expiration of each five-year period, if the  
29 lead agency finds that the surface mining operator has complied  
30 fully with the interim management plan.

31 (B) Require the surface mining operator to commence  
32 reclamation in accordance with its approved reclamation plan.

33 (3) The financial assurances required by Section 2773.1 shall  
34 remain in effect during the period that the surface mining operation  
35 is idle. If the surface mining operation is still idle after the  
36 expiration of its interim management plan, the surface mining  
37 operation shall commence reclamation in accordance with its  
38 approved reclamation plan.

39 (4) Within 60 days of the receipt of the interim management  
40 plan, or a longer period mutually agreed upon by the lead agency

1 and the operator, the lead agency shall review and approve the  
2 plan in accordance with its ordinance adopted pursuant to  
3 subdivision (a) of Section 2774, so long as the plan satisfies the  
4 requirements of this subdivision, and so notify the operator in  
5 writing. Otherwise, the lead agency shall notify the operator in  
6 writing of any deficiencies in the plan. The operator shall have 30  
7 days, or a longer period mutually agreed upon by the operator and  
8 the lead agency, to submit a revised plan.

9 (5) The lead agency shall approve or deny approval of the  
10 revised interim management plan within 60 days of receipt. If the  
11 lead agency denies approval of the revised interim management  
12 plan, the operator may appeal that action to the lead agency's  
13 governing body, which shall schedule a public hearing within 45  
14 days of the filing of the appeal, or a longer period mutually agreed  
15 upon by the operator and the governing body.

16 (6) Unless review of an interim management plan is pending  
17 before the lead agency, or an appeal is pending before the lead  
18 agency's governing body, a surface mining operation that remains  
19 idle for over one year after becoming idle as defined in Section  
20 2727.1 without obtaining approval of an interim management plan  
21 shall be considered abandoned and the operator shall commence  
22 and complete reclamation in accordance with the approved  
23 reclamation plan.

24 (i) An enforcement action that may be brought against a surface  
25 mining operation for operating without an approved reclamation  
26 plan, financial assurance, or interim management plan shall be  
27 held in abeyance pending review pursuant to subdivision (b), (c),  
28 (d), or (h), or the resolution of an appeal filed with the board  
29 pursuant to subdivision (e), or with a lead agency governing body  
30 pursuant to subdivision (h).

31 SEC. 3. Section 2777.5 is added to the Public Resources Code,  
32 to read:

33 2777.5. (a) A mine operator who has failed to properly report  
34 a mine's mineral production or mine status, pursuant to the annual  
35 reporting requirement in Section 2207, prior to January 1, 2012,  
36 may correct the report in the 2012 annual report if the annual report  
37 is submitted on or before July 1, 2013, and if the lead agency  
38 confirms in writing to the department all of the following:

39 (1) The operator has notified the lead agency *and the director*  
40 that it intends to continue surface mining operations *and provides*

1 *evidence to support any production modified on the corrected*  
2 *annual report.*

3 (2) The operator has an existing, valid permit or a vested right  
4 to conduct surface mining operations pursuant to Section 2776.

5 (3) (A) The operator's reclamation plan has been approved and  
6 is in compliance with this chapter ~~and had~~, *the mining operation*  
7 *is in compliance with the approved reclamation plan, the mining*  
8 *operation has an approved financial assurance in place pursuant*  
9 *to Section 2770, and the mining operation has been inspected by*  
10 *the lead agency as provided by Section 2774. A notice from the*  
11 *lead agency to the Office of Mine Reclamation pursuant to Section*  
12 *2774 shall, to the extent applicable, indicate that the operator is*  
13 *seeking a correction of mine status pursuant to this section. The*  
14 *Office of*

15 (B) *The Office of Mine Reclamation* may enter any mine site  
16 for which a mine operator has requested a correction of mine status  
17 pursuant to this section in order to conduct an inspection.

18 (4) The operator demonstrates that there are commercially useful  
19 mineral reserves remaining at the permitted surface mining  
20 operation.

21 (b) Unpaid fees for years during which the operation's status  
22 was not properly reported shall be paid to the department.

23 (c) A mining operation that became idle, as defined in Section  
24 2727.1, that failed to prepare and have approved an interim  
25 management plan and was thus considered abandoned pursuant to  
26 paragraph (6) of subdivision (h) of Section 2770 may be returned  
27 to idle status at the request of the operator if an interim  
28 management plan is approved by July 1, 2013, and upon  
29 verification of compliance with subdivisions (a) and (b).

30 (d) *The mine operator shall be responsible for the reasonable*  
31 *costs of an inspection conducted by the Office of Mine Reclamation*  
32 *pursuant to subparagraph (B) of paragraph (3) of subdivision (a).*